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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/605,404	09/29/2003	Michael A. Kusenko	P03-11	2403

25759 7590 10/18/2006

JOHN J. ELNITSKI, JR.
225 A SNOWBIRD LANE
BELLEFONTE, PA 16823

EXAMINER

KRAMER, NICOLE R

ART UNIT	PAPER NUMBER
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3762

DATE MAILED: 10/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/605,404

Applicant(s)

KUSENKO, MICHAEL A.

Examiner

Nicole R. Kramer

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--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 10 October 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 2, 4 and 6.
Claim(s) rejected: 1, 3 and 5.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attached Responses to Arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. The amendments submitted 10/10/06 are entered because claims 7-9 have been canceled, and thus the amendments reduce the issues for appeal. In addition, claims 1, 3, and 5 have been amended to delete the claim limitations relating to not having any external electrical sources connected to the electrical conducting pads. Such amendments overcome the 112 rejection of claims 1-6, and thus the amendments reduce the issues for appeal.

2. For purposes of appeal, the amended claims would be rejected as follows:

Claims 1, 3, and 5 stand rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,277,142 ("Pinter") in view of U.S. Patent No. 6,132,452 ("the '452 patent"), which is a continuation-in-part of Pinter. With respect to the new claim limitations that each pad has one electrical conductor, Examiner interprets such claim language to require that each pad include at least one electrical conductor (rather than only one conductor). The bioenergy channelizer units 20 of the '142 Pinter patent each include at least one conductive elements (22, 24, 26, 28, 30). In addition, with respect to the limitation that the method allows "the transfer of internal energy flow in the body to its natural pathway," the '142 Pinter patent discloses a method for restoring energy in the human body to its natural pathway (see Abstract). Please see comments made in

the Final Rejection mailed 7/27/06 for further application of the Pinter patents to the claims of the present invention, and also see Response to Argument section below.

Claim 3 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent Application Publication 2004/0044384 ("Leber et al."). Leber et al. discloses an energy therapy device for stimulating energy flow along meridians. A therapy pad (100) is formed of a plurality of energy-emitting elements (102) arranged on a substrate (104), wherein the energy-emitting elements are electrically connected to each other via electrical connections (108) (see Fig. 2 and associated text at paragraph 0064). The energy-emitting elements (102) may be electrodes (see paragraph 0049), which are inherently electrically conducting pads. Further, Leber et al. discloses that the energy-emitting elements may be electrically connected to each other by point-to-point wiring (see paragraph 0055). Leber et al. discloses placing a first energy-emitting element 102 on the patient's back on a left side of the spine about midway between a tailbone and a waist of the body, and placing a second energy-emitting element 102 on the patient's back on a right side of the spine about midway between a tailbone and a waist of the body (see disclosed placement of the bottom therapy pad 700 in Fig. 7). Leber et al. fails to specifically disclose that the position of the pads are held for about 2-3 minutes. It would have been obvious to one having ordinary skill in the art at the time of applicant's invention to hold the devices in place for as long as necessary, but not longer than necessary, in order to restore the energy flow in the human body to its natural pathway, since it has been held that discovering an optimum value (i.e., the amount of time to restore the energy flow in the human body to its natural pathway) of a

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result effective variable involves only routine skill in the art. *In re Boesch*, 617 F.2d 272, 205 USPQ 215 (CCPA 1980).

Claims 2, 4, and 6 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

3. Applicant's arguments filed 10/10/06 have been fully considered but they are not persuasive.

4. In particular, Applicant first argues that nowhere (in either the '142 Pinter patent or the '452 Pinter patent) is it taught or suggested to interconnect electrical conducting pads which are in contact with the body without a wooden or other type of interface between the body and the conducting pads'. Initially, it is noted that the features upon which applicant relies (i.e., the negative limitation of no interface between the body and the conducting pads) are not recited in the rejected claim(s). The claims as currently drafted do not require an electrically conducting surface of the claimed pads to be placed in direct contact with the body - the claims simply require that pads including at least one electrical conductor are placed over particular areas of the body. In addition, Examiner's rejection is primarily based on the bioenergy channelizer units 20 which are placed directly on the body of the '142 patent. Pinter discloses that the thicknesses and relative spacings between the conductive elements, the surrounding dielectric layers,

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and the living organism can be varied in accordance with the amount of energy interaction that an organism desires to occur between the bioenergy channelizer unit 20 and the organism (see col. 11, lines 36-43). Examiner then relies on the '452 patent for the teaching that it is desirable to electrically connect the conductive units 20 to each other to promote the energy flow in an organism (that is since a metallic structure 102 necessarily transmits energy between the conductive units 20 in the '452 patent). Such a combination results in interconnected electrical conducting pads placed directly in contact with the body.

5. Applicant also argues that the '142 patent actually steers away from interconnecting the pads by removing reference to such. However, such an argument appears to be based on the incorrect basis that the '452 patent is an earlier reference (i.e., prior invention) by the same inventor and that the '142 patent then removes subject matter relating to interconnectivity. However, the '142 patent precedes the '452 patent - the '142 patent was filed October 1998 and the '452 patent (which is a CIP of the '142 patent) was later filed in February 1999. The '142 patent introduced the bioenergy channelizer units 20, and the '452 patent utilized such units in an interconnected manner. As such, Examiner respectfully disagrees that the '142 patent teaches away from interconnecting the pads.

6. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that

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any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971). Applicant argues that Examiner has failed to show why one skilled in the art would be motivated to modify the teachings of the Pinter patents to arrive at the applicant's invention by removing the wooden base, cross, and pad alignment in a cross and replace them with separate pads that are interconnected by wires. As explained in the Final Rejection mailed 7/27/06, Examiner relies on the '452 patent for the teaching that it is desirable to electrically connect the conductive units 20 to each other to promote the energy flow in an organism (that is since a metallic structure 102 necessarily transmits energy between the conductive units 20 in the '452 patent). From such a teaching, Examiner maintains that one would be motivated from such a teaching to electrically connect the conductive units 20 of the '152 patent to each other in order to promote the energy flow in an organism from one device located at the first reflex point to another device located along that or another meridian.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nicole R. Kramer whose telephone number is 571-272-

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8792. The examiner can normally be reached on Monday through Friday, 8 a.m. to 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela Sykes can be reached on 571-272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NRK

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10/12/06



George Manuel
Primary Examiner